No. 88-1530

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In The

Supreme Court of the United States

October Term, 1988

JOSEPH V. JULIANO,

Petitioner,

vs.

COMMERCIAL LIFE INSURANCE COMPANY and AUTOMATIC DATA PROCESSING, INC.

Respondents.

On Petition For Writ Of Certiorari To The California Supreme Court

BRIEF OF THE STATE OF CALIFORNIA AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

Pursuant to Sup.Ct.R. 36.4, the State of California, by its Attorney General, respectfully submits this brief as *amicus curiae* in support of the Petition for Certiorari filed by Joseph V. Juliano. The State of California appears for the purpose of protecting the scope of its authority, expressly recognized by Congress, to regulate the business of insurance without impairment by the Employee Retirement Income Security Act (ERISA).[1] 29 U.S.C. § 1144(b)(2)(A); see also, 15 U.S.C. §§ 1011, 1012; ANNOTATION, *Validity, Construction, and Application of McCarran-Ferguson Act (15 USC §§ 1011-1015), Dealing With Regulation of Insurance Business By State or Federal Law*, 21 L.Ed.2d 938, 948-951 (1969).

The State of California is interested in the instant petition because the state's supreme court has read this Court's decision in *Pilot Life Ins. v. Dedeaux*, 481 U.S. 41 (1987), necessarily, if only impliedly, to decree that a civil action for damages, brought pursuant to a California statute which regulates the business of insurance,[2] is

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[1] 29 U.S.C. § 1001 *et seq.*

[2] The civil action for damages is authorized by Cal. Ins. Code, § 790, California's Unfair Practices Act, as construed by the California Supreme Court in *Royal Globe Ins. Co. v. Superior Court*, 23 Cal.3d 880 (1979). That construction of the Unfair Practices Act has been overturned in a decision having a prospective effect only and, therefore, leaving Petitioner Juliano's civil action intact as a matter of state law. See *Moradi-Shalal v. Fireman's Fund Ins. Co.*, 46 Cal.3d 287 (1988). Since *Moradi-Shalal*, legislation has been introduced to include in the Unfair Practices Act a specific statutory authorization for

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preempted by ERISA's civil enforcement provisions, ERISA § 502(a); 29 U.S.C. § 1132(a). *Commercial Life Ins. Co. v. Superior Court*, 47 Cal.3d 473 (1988).

In *Pilot Life, supra*, this Court considered the question whether Mississippi's common law, as applied to the business of insurance, was exempted from preemption under ERISA by the "saving clause," 29 U.S.C. § 1144(b)(2)(A). The Court first determined that, because state common law could not reasonably be considered a "law which regulates insurance," the mere fact that common law was incidentally applied to the business of insurance would not save it from preemption. *Pilot Life*, 481 U.S. at 51-57. The Court could have ended its discussion at that point, but did not.

At the evident urging of the Solicitor General,[3] the Court proceeded to consider a second, distinct basis for

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enforcement by civil action for damages. See SB 1329 (Marks), a copy of which is appended hereto. The legislative process, however, is encumbered by the prospect of federal preemption left by the state supreme court's reading of *Pilot Life*. Amicus is concerned, as well, because the state supreme court's reading of *Pilot Life* has implications for other state laws which regulate the business of insurance. For example, Cal. Ins. Code, § 1861.03, adopted by California voters in November 1988, expressly makes California's Unruh Civil Rights Act, Cal. Civ. Code, § 51, applicable to the business of insurance. Violations of the Unruh Civil Rights Act are remediable by, *inter alia*, civil action for damages or action by the Attorney General for injunctive relief. Cal. Civ. Code, § 52.

[3] See *Brief for the United States as Amicus Curiae, Pilot Life, supra*, 481 U.S. 41 (No. 85-1043) (hereafter, *Pilot Life Brief for the United States)*, at 16, n. 13, 18-19.

finding ERISA preemption of the state damage action. That finding of preemption was grounded on the Solicitor General's contention that ERISA § 502(a) could be construed independently to exclude any and all remedies not afforded by ERISA itself. *Pilot Life*, 481 U.S. at 51-57.

The Court's § 502(a) analysis was not necessary to disposition of *Pilot Life*. It was urged upon the Court by the Solicitor General only to forestall certain "line drawing" difficulties he anticipated should the Court adopt his contention that ERISA's saving clause encompasses only state laws specifically regulating the business of insurance. *Pilot Life Brief for the United States*, at 15-16.

But, this analysis did not concern a state law claim for damages which *does*, at least arguably, come within ERISA's saving clause.[4] And, with respect to such a state

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[4] The California Supreme Court did not expressly decide the question whether Cal. Ins. Code, § 790.03 was a "law which regulates insurance," within the meaning of the saving clause, although the proposition was not seriously disputed. *Commercial Life*, 47 Cal.3d at 488 (Mosk, J., dissenting.) Amicus respectfully notes, however, that this Court's suggestion that certain "McCarran-Ferguson Act factors," see *Pilot Life*, 481 U.S. at 48-51, may define the outer limits of a "law which regulates insurance" poses significant analytical difficulties. To begin with, those factors were devised for the purpose of giving only the most quintessential definition to the phrase "business of insurance," in order to secure the broadest congressional authority to regulate anti-trust matters under § 2(b) – the Act's "secondary purpose". See *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 218, n. 18 (responding to 440 U.S. at 233-256 (Brennan, J., dissenting)), and 220 (1978). The criteria were never intended to be dispositive of the Act's

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law claim, the § 502(a) analysis is fundamentally flawed, for the plain language of the saving clause itself expressly prohibits the very analysis in which the Court indulged. This methodological barrier was not addressed by the Solicitor General in his brief.

Despite the fact that the Court's § 502(a) analysis can only logically be applied in a case where a state law claim is not even arguably preserved from preemption by the

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primary purpose under §§ 2(a) and 2(b) of the Act, viz., preservation of state authority to regulate the business of insurance, see *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 134-140 (1981) (Rehnquist, J., dissenting). Furthermore, with all respect, the Solicitor General's application of the McCarran-Ferguson Act factors, *Pilot Life Brief for the United States*, at 17-18, accepted by this Court, *Pilot Life*, 481 U.S. at 50-51, goes beyond the Court's analysis in *Metropolitan Life Ins. Co. v. Massachusetts*, and has no logical foundation. In *Metropolitan Life Ins.*, the Court looked to the McCarran-Ferguson Act factors as guidance for assessing whether the *practices* sought to be regulated by the mandated-benefit law constituted the business of insurance. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 743-745 (1985). In *Pilot Life*, however, the Solicitor General urged the Court to apply the factors, not to the *practices* sought to be regulated, but rather to the *regulation* itself, i.e., in that case, to Mississippi's common law of bad faith; the Court did so. 481 U.S. at 50-51. Such an analysis, however, literally equates the *regulation* of insurance with the *business* of insurance, and suggests that Congress intended to encompass within the insurance clause only state laws which themselves accomplish the purposes and practices of the insurance industry they regulate. Amicus respectfully submits that it is aware of no authority to support such a proposition, and that the Court's analysis in *Pilot Life* threatens to circumscribe state regulatory authority in a manner never intended by Congress.

saving clause itself, so sweeping was the Court's language in *Pilot Life* on this point that Amicus cannot simply assert that the state supreme court misread this Court's decision. The State of California respectfully requests that this Court grant certiorari to consider whether the *Pilot Life* analysis *can*, in fact, be applied in a case where a damage claim arises out of a state law specifically regulating the business of insurance.

ARGUMENT

I

THE SOLICITOR GENERAL'S ASSESSMENT OF ERISA § 502(a), ADOPTED BY THIS COURT IN *PILOT LIFE*, IS ANALYTICALLY FLAWED IN THE CONTEXT OF A STATE LAW ENCOMPASSED BY THE SAVING CLAUSE AND, IN FACT, CONTRAVENES EXPRESS CONGRESSIONAL DIRECTIVES

The Solicitor General asserted that Congress may be presumed to have intended that ERISA § 502(a) preempt compensatory remedies, not because Congress expressly so stated, but because Congress arguably would have made reference to such state remedies in a committee report discussing § 502(a) had it intended to exempt them from preemption. *Pilot Life Brief for the United States*, at 19. The Court essentially accepted this argument. *Pilot Life*, 481 U.S. at 55-56.

This Court has long been reluctant to infer preemption in the absence of evidence that this was the clear and manifest purpose of Congress. See, e.g., *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); *DeCanis v. Bica*, 424 U.S. 351 (1976); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157 (1978). Furthermore, in the McCarran-Ferguson Act,[5] Congress has expressly prohibited the courts from invalidating state insurance laws on grounds of federal preemption, except upon affirmative and unambiguous evidence of Congressional intent to preempt such laws. 15 U.S.C. §§ 1011, 1012(b).

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[5] 15 U.S.C. § 1011 *et seq.*

The analysis offered by the Solicitor General in *Pilot Life* was predicated upon negative-implication drawn from meager legislative history. Reliance upon such an analysis for purposes of invalidating a state law which, unlike Mississippi's common law, does come within the insurance saving clause, violates the spirit, if not the letter, of the McCarran-Ferguson Act.

Furthermore, reliance upon such an argument contravenes the plain language of the saving clause itself. That clause unequivocally states that "[N]othing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance. . . ." 29 U.S.C. § 1144(b)(2)(A). Subchapter I includes § 502. Accordingly, if a state law falls within the saving clause, Congress has expressly prohibited reliance on ERISA's substantive provisions as a justification for relieving any person from that law. Extension of the Solicitor General's methodology to the instant case thus has this Court construing § 502(a) to relieve or exempt a person from a state law which regulates insurance – a construction in utter conflict with express congressional directive.

Because, unlike *Pilot Life*, this case involves, at least arguably, a state law which regulates insurance, the explicit and unequivocal statements of Congress in both the McCarran-Ferguson Act and the saving clause itself raise serious questions whether the Solicitor General's methodology is applicable, in view of the constitutional doctrine of separation of powers. Amicus respectfully requests, therefore, that certiorari be granted.

II

THE SOLICITOR GENERAL'S ARGUMENT FAILED TO ADDRESS CONGRESS' EVIDENT PURPOSE AT CREATING A DUAL SYSTEM OF FEDERAL AND STATE REGULATION OF THE BUSINESS OF INSURANCE

There can be little doubt that regulation of the business of insurance is an area long left to the several States by Congress, in recognition of the role played by such regulation in securing the well-being of citizens. See 15 U.S.C. § 1011; see *Western & Southern Life Ins. Co. v. State Board of Equalization*, 451 U.S. 648, 652-654 (1981); *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 888-893 (1985)(O'Connor, J., dissenting). There can also be little doubt that Congress intended to leave at least some measure of state insurance regulation undisturbed. 29 U.S.C. § 1144(b)(2)(A); see *Metropolitan Life Ins. Co. v. Massachusetts, supra*, 471 U.S. 724, 744, n. 21, 745, n. 23.[6]

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[6] It has been argued that permitting insurers to be subject to varying regulation by the several States defeats Congress' purpose of achieving national uniformity. But such an argument ignores the fact that ERISA's preemption clause was developed *around* the insurance saving clause, indicating that Congress all along intended to preserve to the States the power to regulate the business of insurance. See *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 744-745 (1984). The argument also ignores the congressional purpose behind the McCarran-Ferguson Act which, as the language of the saving clause quite clearly indicates, Congress intended to further, rather than limit. Congress has expressly declared that regulation of the business of insurance by the several States is in the public interest. 15 U.S.C. § 1011. That interest is certainly no less

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Nevertheless, the Solicitor General's argument in *Pilot Life*, posits an "absolutist" model, wherein Congress has wholly occupied the field of available remedies to the exclusion of all other remedies. But the statute itself, and related legislative history, indicates that Congress was more precise than the Solicitor General would suggest, and that Congress, in fact, intended to provide a comprehensive and, in some cases, overlapping, system of Federal-State regulation to the end of protecting employees and their beneficiaries. Such a scheme requires careful attention to the lines Congress has actually drawn, rather than to lines which may be analytically preferable. Cf. *Northwest Central Pipeline Corp. v. State Corporation Commissioner of Kansas*, ___ U.S. ___, 57 U.S.L.W. 4302 (1989)(No. 86-1856).

It is a rule of long standing that "the meaning of the statute must, in the first instance, be sought in the language in which the Act is found, and if that is plain, . . . the sole function of the court is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). In this regard, the language actually used by Congress in the saving clause itself is very significant: "[N]othing in this subchapter shall be construed to exempt or relieve any person from any law of any State

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compelling than is the purpose of achieving national uniformity in *other* areas of ERISA's application. Finally, the argument ignores the very obvious fact that Congress must certainly have *anticipated* and assented to varying state regulation as pertains to insurance, else the insurance saving clause has no purpose whatsoever.

which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A).

This is not "all-or-nothing" language; it is language to the effect that, whatever obligations may be imposed by ERISA's substantive provisions, those obligations may not be construed "to exempt or relieve" persons from state insurance, banking, and securities laws. This dual system of regulation, however, does not apply to employee benefit plans themselves, by virtue of the "deemer clause", 29 U.S.C. § 1144(b)(2)(B).

This latter *proviso*, however, is itself qualified, where the employee benefit plan is a multiple employer welfare arrangement or trust (MET), with respect to which state laws which regulate insurance may apply *directly*, as specified. 29 U.S.C. § 1144(b)(6)(A). The provisions relating to MET's are instructive in several respects. They were added to ERISA in 1983[7] in order to correct abuses resulting from under-funded MET's. See Remarks of Representative Burton, 128 Cong.Rec. H9609 (Dec. 13, 1982); Remarks of Representative Erlenborn, 128 Cong.Rec. H9610 (Dec. 13, 1982).[8] These MET's were avoiding regulation under state insurance laws by raising the shield of

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[7] Pub.L. No. 97-473, § 302(b) (Jan. 14, 1983), 96 Stats. 2613.

[8] Representative Erlenborn observed: "Generally, the abuses connected with the MET's can be and, in some cases, have been dealt with under appropriate state laws. Unfortunately, the MET operators have been successful in thwarting timely investigations and other enforcement activities of state agencies by asserting that such entities are ERISA 'plans' for which all state regulation is preempted pursuant to section 514 of the Employee Retirement Income Security Act of 1974

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preemption under ERISA as employee benefit plans, However, Congress was concerned that ERISA's administrative mechanisms were inadequate to afford sufficient protection against the abuses.[9]

Congress was aware that, under existing law, state insurance laws are applicable to insurance companies which provide funding for the MET's, see Remarks of Representative Erlenborn, 128 Cong.Rec. H9611 (Dec. 13,

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(ERISA). In all too many cases, the result has been that state remedial actions have come too late to head off insolvency and benefit losses stemming from mismanagement and misdeeds of the MET operators. This has proved to be the general rule in spite of steps taken by the Department of Labor to clarify the jurisdictional role of the States in regulating MET's. In fact, the ERISA Administrator in the Department of Labor has testified that in virtually all of the cases in which the Department has issued an opinion as to coverage of a MET entity under ERISA, the entity in question has been found not to qualify as an employee welfare benefit plan with respect to which the ERISA preemption provision applies. The proposed legislation closes off all avenues of opportunity that might currently exist for MET operators to avoid such regulation at the Federal and State level as may be applicable in each particular circumstance." 129 Cong.Rec. H9610 (Dec. 13, 1982).

[9] Representative Burton observed: "By the time the U.S. Department of Labor decides if Federal law applies, the individuals who established the bogus insurance ventures have long since departed with the money and workers are left without any means of covering unpaid medical bills." 128 Cong.Rec. H9609 (Dec. 13, 1982).

1982),[10] but Congress wanted to ensure that state insurance laws would be applicable directly to the MET's themselves, even at the risk of some resulting disuniformity in that regulation.[11]

The 1983 amendments demonstrate that state regulation of insurance practices is not merely *incidental* to Congress' purposes behind ERISA, but is *integral* to those purposes. By permitting states to continue to regulate benefit plans *indirectly*, through their insurance, banking, and securities laws, Congress created a comprehensive scheme for protecting employees and their beneficiaries as respects benefit plans.[12] Significantly, Congress did not

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[10] "[I]t is clear even under present law that state law may apply to funding vehicles for plans; for example, state insurance laws obviously apply to licensed insurance companies which underwrite benefits in a number of individual employer or union established benefit plans."

[11] The 1983 amendments confirm that Congress' principal concern in ERISA is the protection of employee benefit plans and the provision of *minimum* standards for assuring the equitable character of such plans and their financial soundness. 29 U.S.C. § 1001(a); see Remarks of Representative Burton, 128 Cong.Rec. H9609 (Dec. 13, 1982) ("Although the Employee Retirement Income Security Act of 1974 (ERISA) was enacted to protect workers, some individuals have used ERISA as a smoke screen to conceal fraudulent activities"). Congressional concern with national uniformity is obviously intended to *further* its primary purpose, not *thwart* it.

[12] Furthermore, legislative history surrounding 1980 amendments to the Federal Trade Commission Act, 15 U.S.C. § 46(h), indicates Congress' recognition – and endorsement – of state laws, such as Cal. Ins. Code § 790.03, as valid and valuable measures for regulating insurance industry practices. See House Conf. Rpt., 1980 U.S.Code Cong.Admin.News at p.

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alter that scheme, in addressing the problem of MET's, by increasing *federal* regulation of those arrangements; rather, Congress recognized that the *States* could provide the necessary protections and, accordingly, extended *state* insurance regulation to cover MET's directly.[13]

Perhaps most significant, however, is the fact that the 1983 amendments mark the first instance where Congress has *qualified* permissible state insurance regulation by either specifying acceptable areas of regulation (as in the case of subdivision (b)(6)(A)(i)) or by requiring such regulation to be "consistent" with the substantive provisions of ERISA (as in the case of subdivision (b)(6)(A)(ii)). The significance lies in the fact that Congress has chosen to supervise state insurance regulation only where such regulation would be applied *directly* to an employee benefit plan.

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1144; see also, Remarks of Senator Metzenbaum, 126 Cong.Rec. 2374 (1980); Remarks of Senator Durkin, 126 Cong.Rec. 2376 (1980).

[13] In the case of a MET which is an employee welfare benefit plan that is not fully insured, Congress has expressly permitted States to regulate *all* insurance aspects of the MET, not merely funding levels, to the extent that such state regulation is not inconsistent with the substantive provisions of ERISA. 29 U.S.C. § 1144(b)(6)(A)(ii). The Secretary of Labor may exempt a MET from such total state regulation, only if the MET would qualify as an employee benefit plan under ERISA. 29 U.S.C. § 1144(b)(6)(B). But, in the case of such exemption, the employee benefit plan would, nevertheless, be subject to state insurance laws regulating funding levels. 29 U.S.C. § 1144(b)(6)(A)(i).

No similar qualification for consistency with ERISA is found in the saving clause, which permits application of state insurance laws *indirectly* against employee benefit plans, by permitting direct regulation of the *insurers* of such plans. Moreover, if Congress believed that, apart from the preemption clause, ERISA's substantive provisions would, *independently*, permit only consistent state regulation of insurance in any event, it would have been unnecessary for Congress to have insisted on consistency in relation to insurance regulation of MET'S altogether. Indeed, the fact that Congress insisted on "consistency" with respect to *direct* state regulation of employee benefit plans strongly suggests that Congress understood fully that even *inconsistent* state insurance laws are applicable to insurance companies which *fund* such employee benefit plans.

Despite its lack of simple elegance, ERISA itself articulates the areas wherein, and in what respects, Congress has sought to exclude regulation of insurance by the several States. Congress knows how to allow only "consistent" regulation by the several States, when Congress *wants* to permit only consistent regulation by the States. 29 U.S.C. § 1144(b)(6)(A)(ii). Congress also knows how to carve out of otherwise preempted fields, areas wherein a State may regulate. 29 U.S.C. § 1144(b)(6)(A)(i); see also 29 U.S.C. § 1144(b)(5). And, Congress' reservation of authority to the several States to affect employee benefit plans *indirectly* by regulating insurers is *unqualified*, in language which could hardly be more unequivocal. 29 U.S.C. § 1144(b)(2)(A). There is, therefore, no need to go beyond the statute itself to discern whether Congress might have intended some other qualification on state

authority to regulate insurers. Cf., *California Federal Savings & Loan Assn. v. Guerra*, 479 U.S. 272, 280-284, and 295-296 (1987) (Scalia, J., concurring).

If *Pilot Life's* discussion of ERISA § 502(a) is allowed to be extended, unscrutinized, to invalidate a state law applied specifically to the insurance industry, the Solicitor General will have been able, in a single stroke, unilaterally to replace the *actual* and deliberately crafted policy of Congress, as reflected by Congress' own words, with a policy that is flatly contradictory, if analytically preferable. The Court is respectfully requested to permit more thorough development and analysis of Congress' intent respecting state regulation of insurance by granting the instant petition for certiorari.

CONCLUSION

The Federal-State tensions created by ERISA's preemption and saving clauses are obviously of great and continuing concern to the several States, implicating the very delicate and central fabric of federalism upon which the Constitution is based. See, *Commercial Life Ins. Co. v. Superior Court, supra*, 47 Cal.3d at 490-491 (Mosk, J., dissenting). This is particularly true where, as here, congressional efforts to preserve historic and emotion-laden arrangements between Congress and the several States concerning the regulation of the business of insurance appear to have been swept aside for purposes of analytical convenience.

If a traditional area of state regulation is to be preempted by a federal enactment, Congress must clearly

evince its intent to do so; this Court has never accepted a lesser standard. Yet this Court's own decision in *Pilot Life* is being read, not unreasonably, to decree that state laws regulating insurance must be declared preempted, based, not on any clear indication of congressional intent to do so, but rather – and despite persuasive evidence of an apparent congressional intent *not* to do so – based on speculative and tenuous negative implications drawn from scant legislative history.

The State of California respectfully and urgently requests that the Court grant the Petition for Certiorari herein so that substantial but unaddressed issues of state authority may be more fully and completely developed than they were in *Pilot Life*.

DATED: April 14, 1989

Respectfully submitted,

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APPENDIX

SENATE BILL No. 1329

Introduced by Senators Marks and Rosenthal
(Coauthor: Assembly Member Connelly)

March 9, 1989

An act to add Section 790.031 to the Insurance Code, relating to Insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1329, as introduced, Marks. Insurance: good faith.

Existing law prohibits certain unfair and deceptive practices in the business of insurance. However, under existing law, a violation of those statutory provisions does not, in itself, give rise to a private cause of action against an insurer.

This bill would provide that any person engaged in the business of insurance is required to act in good faith toward, and to deal fairly with, policyholders and others, as specified. The bill would provide that a policyholder or other person may bring an action against an insurer or other licensee of the Department of Insurance for a violation of that requirement and other statutory provisions that prohibit unfair and deceptive practices, and may recover compensatory and exemplary damages.

Vote: majority. Appropriation: no. Fiscal committee: No. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 790.031 is added to the Insurance Code, to read:

790.031. Any person engaged in the business of insurance in the State of California is required to act in good faith toward, and to deal fairly with, current and prospective policyholders and other persons intended to be protected by any policy of insurance. A policyholder or a third party may bring an action against an insurer or licensee for violation of the provisions of this article, including, but not limited to, subdivision (h) of Section 790.03.

In accordance with the Unruh Civil Rights Act, Section 51 of the Civil Code, an insurer shall not arbitrarily discriminate against individuals in the denial of insurance coverage.

The purpose of this article is to regulate unfair insurance practices, including unfair claims practices, by providing state-court remedies, including compensatory and exemplary damages, to policyholders and claimants who are victims of unfair insurance practices. It is specifically intended that these remedies be construed to regulate the business of insurance regardless of whether the policy was purchased individually or as a member of a group, and regardless of whether or not the policy was purchased or provided by or through an employer, and thereby to provide that state-law remedies are available notwithstanding the provisions of the Employee Retirement and Income Security Act, 29 U.S.C. Section 1001 et seq.

Any award of punitive damages against an insurer shall not be passed on to policyholders directly or indirectly.